

# CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Charlie Hartford	Team: Squad #12	CCRB Case #: 201801900	<input checked="" type="checkbox"/> Force <input type="checkbox"/> Discourt. <input type="checkbox"/> U.S. <input checked="" type="checkbox"/> Abuse <input type="checkbox"/> O.L. <input checked="" type="checkbox"/> Injury
Incident Date(s) Sunday, 10/22/2017 5:20 AM	Location of Incident: § 87(2)(b) § 87(2)(b)	18 Mo. SOL 4/22/2019	Precinct: 34
Date/Time CV Reported Tue, 10/24/2017 4:29 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 10/24/2017 4:29 PM

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. Officers			034 PCT
2. POM Josue Torres	21771	960031	034 PCT
3. DTS Fabio Nunez	872	925839	034 PCT
4. SGT Joan Ferreira	00469	941746	034 PCT
5. LT Merani Rotte	00000	938498	034 PCT
6. POM James Ludvick	01880	959772	034 PCT
7. POM Daniel Boylan	13957	959503	034 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Alexandra Isabelle	07679	956765	034 PCT
2. POM Anthony Presto	04236	954244	034 PCT
3. POM John Bonhomme	00633	954559	034 PCT
4. POM Shelby Hernandez	11860	956733	034 PCT
5. POM Zachary Parker	16351	961071	034 PCT
6. POM Anthony Stabile	17519	961323	034 PCT
7. POM Louis Chen	22748	953745	034 PCT
8. POM Juan Castillo	23545	952557	019 PCT

Officer(s)	Allegation	Investigator Recommendation
A.DTS Fabio Nunez	Force: At § 87(2)(b) in Manhattan, Detective Fabio Nunez used physical force against § 87(2)(b)	
B.POM Josue Torres	Force: At § 87(2)(b) in Manhattan, Police Officer Josue Torres used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
C.SGT Joan Ferreira	Abuse: Sergeant Joan Ferreira entered § 87(2)(b) in Manhattan.	
D.LT Merani Rotte	Abuse: Lieutenant Merani Rotte entered § 87(2)(b) in Manhattan.	
E.SGT Joan Ferreira	Abuse: At § 87(2)(b) in Manhattan, Sergeant Joan Ferreira stopped § 87(2)(b).	
F.SGT Joan Ferreira	Abuse: At § 87(2)(b) in Manhattan, Sergeant Joan Ferreira frisked § 87(2)(b).	
G.SGT Joan Ferreira	Abuse: At § 87(2)(b) in Manhattan, Sergeant Joan Ferreira stopped individuals.	
H.SGT Joan Ferreira	Abuse: At § 87(2)(b) in Manhattan, Sergeant Joan Ferreira frisked individuals.	
I.SGT Joan Ferreira	Abuse: At § 87(2)(b) in Manhattan, Sergeant Joan Ferreira searched individuals.	
J.LT Merani Rotte	Abuse: At § 87(2)(b) in Manhattan, Lieutenant Merani Rotte participated in stopping individuals.	
K.LT Merani Rotte	Abuse: At § 87(2)(b) in Manhattan, Lieutenant Merani Rotte participated in frisking individuals.	
L.LT Merani Rotte	Abuse: At § 87(2)(b) in Manhattan, Lieutenant Merani Rotte participated in searching individuals.	
M.POM Daniel Boylan	Abuse: At § 87(2)(b) in Manhattan, Police Officer Daniel Boylan stopped individuals.	
N.POM Daniel Boylan	Abuse: At § 87(2)(b) in Manhattan, Police Officer Daniel Boylan frisked individuals.	
O.POM James Ludvick	Abuse: At § 87(2)(b) in Manhattan, Police Officer James Ludvick stopped individuals.	
P.POM James Ludvick	Abuse: At § 87(2)(b) in Manhattan, Police Officer James Ludvick frisked individuals.	
Q.SGT Joan Ferreira	Abuse: Sergeant Joan Ferreira searched § 87(2)(b) in Manhattan.	
R.LT Merani Rotte	Abuse: Lieutenant Merani Rotte searched § 87(2)(b) in Manhattan.	
S.SGT Joan Ferreira	Abuse: At § 87(2)(b) in Manhattan, Sergeant Joan Ferreira seized § 87(2)(b) and § 87(2)(b) property.	
T.LT Merani Rotte	Abuse: At § 87(2)(b) in Manhattan, Lieutenant Merani Rotte seized § 87(2)(b) and § 87(2)(b) property.	
U. Officers	Abuse: At § 87(2)(b) in Manhattan, officers damaged § 87(2)(b) and § 87(2)(b) property.	
V.SGT Joan Ferreira	Abuse: Sergeant Joan Ferreira entered § 87(2)(b) in Manhattan.	
W.LT Merani Rotte	Abuse: Lieutenant Merani Rotte entered § 87(2)(b) in Manhattan.	
X.SGT Joan Ferreira	Abuse: Sergeant Joan Ferreira searched § 87(2)(b) in Manhattan.	
Y.LT Merani Rotte	Abuse: Lieutenant Merani Rotte searched § 87(2)(b) in Manhattan.	

Officer(s)	Allegation	Investigator Recommendation
Z.SGT Joan Ferreira	Abuse: At § 87(2)(b) in Manhattan, Sergeant Joan Ferreira seized § 87(2)(b) and § 87(2)(b) property.	
2A.LT Merani Rotte	Abuse: At § 87(2)(b) in Manhattan, Lieutenant Merani Rotte seized § 87(2)(b) and § 87(2)(b) property.	
2B.SGT Joan Ferreira	Abuse: At § 87(2)(b) in Manhattan, Sergeant Joan Ferreira damaged § 87(2)(b) and § 87(2)(b) property.	
2C.SGT Joan Ferreira	Abuse: Sergeant Joan Ferreira entered § 87(2)(b) in Manhattan.	
2D.SGT Joan Ferreira	Abuse: Sergeant Joan Ferreira searched § 87(2)(b) in Manhattan.	
2E.SGT Joan Ferreira	Abuse: At § 87(2)(b) in Manhattan, Sergeant Joan Ferreira damaged § 87(2)(b) and § 87(2)(b) property.	
2F.LT Merani Rotte	Abuse: At § 87(2)(b) in Manhattan, Lieutenant Merani Rotte damaged § 87(2)(b) and § 87(2)(b) property.	
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		
§ 87(2)(g), § 87(4-b)		

### 2061 Case Summary

On October 24, 2017, § 87(2)(b) filed this complaint with the CCRB via phone under original case § 87(2)(b). On October 27, 2017, Captain John O’Connell of the 34<sup>th</sup> Precinct reported this incident to IAB under original log § 87(2)(b). On November 2, 2017, the IAB referral was received by the CCRB. On March 9, 2018, this case was generated to address the second of two incidents initially addressed in CCRB § 87(2)(b).

On October 22, 2017, at approximately 5:20 a.m., at § 87(2)(b) in Manhattan, Detective Fabio Nunez and Police Officer Josue Torres of the 34<sup>th</sup> Precinct allegedly used force against § 87(2)(b) (**Allegations A and B: Force,** § 87(2)(g) § 87(2)(b)).

On October 22, 2017, at approximately 5:20 a.m., Sergeant Joan Ferreira and Lieutenant Merani Rotte of the 34<sup>th</sup> Precinct entered the areas of § 87(2)(b) in Manhattan that would be accessible to the public during business hours (**Allegations C and D: Abuse of Authority,** § 87(2)(g)). Sgt. Ferreira stopped and frisked § 87(2)(b) and stopped, frisked and searched individuals (**Allegations E-I: Abuse of Authority,** § 87(2)(g)). Lt. Merani Rotte of the 34<sup>th</sup> Precinct participated in stopping, frisking and searching individuals (**Allegations J-L: Abuse of Authority,** § 87(2)(g)). Police Officer Daniel Boylan and Police Officer James Ludvick of the 34<sup>th</sup> Precinct stopped and frisked individuals (**Allegations M-P: Abuse of Authority,** § 87(2)(g)). Sgt. Ferreira and Lt. Rotte searched and seized property from areas of § 87(2)(b) in Manhattan that would be accessible to the public during business hours (**Allegations Q-T: Abuse of Authority,** § 87(2)(g)). Officers allegedly broke down the door to the basement level of § 87(2)(b) in Manhattan and to § 87(2)(b) liquor room (**Allegation U: Abuse of Authority,** § 87(2)(g)). Sgt. Ferreira and Lt. Rotte entered, searched and seized property from the non-publicly accessible areas of § 87(2)(b) in Manhattan (**Allegations V-2A: Abuse of Authority,** § 87(2)(g)). Sgt. Ferreira broke down the door to § 87(2)(b) office and entered and searched the location (**Allegations 2B-2D: Abuse of Authority,** § 87(2)(g)). Sgt. Ferreira and Lt. Rotte damaged § 87(2)(b) and § 87(2)(b) property (**Allegations 2E and 2F: Abuse of Authority,** § 87(2)(g)).

§ 87(2)(g), § 87(4-b)

A concurrent investigation into § 87(2)(b) case was conducted by Manhattan North Investigations under case number § 87(2)(b).

This case contains video evidence, which may be reviewed at BR 11-20. Transcriptions of this footage may be reviewed at BR 21.

### **Findings and Recommendations**

**Allegation (A) Force: At § 87(2)(b) in Manhattan, Detective Fabio Nunez used physical force against § 87(2)(b)**

**Allegation (B) Force: At § 87(2)(b) in Manhattan, Police Officer Josue Torres used physical force against § 87(2)(b)**

§ 87(2)(b) provided a brief phone statement to the CCRB wherein he alleged that at approximately 5:20 a.m. on October 22, 2017, officers entered a poker tournament located at § 87(2)(b) in Manhattan, at which § 87(2)(b) was in attendance, in search of an after-hours location (BR 01). Det. Fabio Nunez and PO Josue Torres pushed § 87(2)(b) against a wall and handcuffed him, at which time § 87(2)(b) sustained a laceration to his left eyelid. § 87(2)(b) also claimed that an officer attempted to “physically assault” him in an unspecified manner. § 87(2)(b) stated that he wished for the CCRB to contact his attorney prior to proceeding with his complaint. In the course of numerous subsequent attempts to contact both § 87(2)(b) and his attorney, the investigation was unable to schedule § 87(2)(b) to provide a sworn statement regarding these allegations (BR 02).

§ 87(2)(b) who stated that he does not know § 87(2)(b) provided a statement in which he was not in the same location as § 87(2)(b). He had no testimony regarding these allegations.

Both PO Torres and Det. Nunez were consistent in stating that upon encountering an illegal poker tournament in the lower level of § 87(2)(b) in Manhattan, § 87(2)(b) became irate and disregarded officers’ instructions to remain inside the location (BR 03 and 04). As § 87(2)(b) attempted to leave, Det. Nunez and PO Torres grabbed § 87(2)(b) by both of his arms, moved him to the right in a centrifugal fashion, and handcuffed § 87(2)(b). As a result, § 87(2)(b) inadvertently received a cut above his eye, possibly as a result of contact with either a door or a wall in the basement. Both officers denied using additional force against § 87(2)(b).

§ 87(2)(g)

**Allegation (C) Abuse of Authority: Sergeant Joan Ferreira entered § 87(2)(b) in Manhattan.**

**Allegation (D) Abuse of Authority: Lieutenant Merani Rotte entered § 87(2)(b) in Manhattan.**

It is undisputed that at approximately 5:20 a.m. on October 22, 2017, officers acting under the direction of Sgt. Ferreira and Lt. Rotte entered the § 87(2)(b) located at § 87(2)(b) in Manhattan. It is undisputed that § 87(2)(b) Restaurant’s State Liquor Authority license had

been revoked prior to the date of incident, and that officers were not in possession of a search warrant.

§ 87(2)(b) stated during his verified interview that on October 22, 2017, he had rented out the § 87(2)(b) which he co-owns with his brother, § 87(2)(b) to a third party for a private event (BR 05). Patrons were not being charged for entry, music was being played at reasonable volume, and alcohol was present but was not being sold by § 87(2)(b) § 87(2)(b) did not describe to the investigation the precise means by which the partygoers were gaining access to the premises. At approximately 5:20 a.m., § 87(2)(b) became aware of an officer in plainclothes knocking on the front door of the establishment, which was locked. Patrons began leaving through the back door of the establishment, which previously had been locked as well, at which time two officers entered the back door, turned on the lights, and opened the front door to allow additional officers entry. § 87(2)(b) initial complaint was consistent with his sworn statement.

§ 87(2)(b) declined to provide a detailed statement to this investigation (BR 06). His phone statement was consistent with § 87(2)(b)

§ 87(2)(b) stated over the phone that on October 22, 2017, he was outside the § 87(2)(b) waiting for his girlfriend when he was approached by Sgt. Ferreira (BR 07). Sgt. Ferreira asked § 87(2)(b) who was an attendee and was not an authoritative party at the event, if he “[ran] this place,” which § 87(2)(b) denied. Sgt. Ferreira threatened to arrest § 87(2)(b) if he did not allow officers entry, and § 87(2)(b) was subsequently placed under arrest. § 87(2)(b) did not see how officers entered § 87(2)(b) and declined to provide a more detailed statement to the investigation (BR 44).

Sgt. Ferreira stated during his CCRB interview that on the date of incident, he and Lt. Rotte were addressing a condition of after-hours locations in the 34<sup>th</sup> Precinct (BR 08). Sgt. Ferreira had prior knowledge from social media, as well as from club owners in the area, that § 87(2)(b) was serving liquor illegally and acting as an after-hours club. Sgt. Ferreira was personally involved in the revocation of § 87(2)(b) State Liquor Authority (SLA) license over a month prior, and Sgt. Ferreira knew on this date that § 87(2)(b) did not have a valid license to serve alcohol.

At approximately 5:20 a.m., Sgt. Ferreira went to the § 87(2)(b) with Lt. Rotte. For approximately 5-10 minutes, Sgt. Ferreira observed § 87(2)(b) outside the § 87(2)(b) collecting a fee for entry. Sgt. Ferreira could hear loud music inside the establishment, and observed that § 87(2)(b) had a totally opaque façade, which is an SLA violation. Sgt. Ferreira approached § 87(2)(b) told him that he needed to let people out of § 87(2)(b) and instructed him to open the door. Sgt. Ferreira’s only intentions in issuing this instruction were to clear the individuals out of the location, confiscate the illegal liquor inside and to arrest the authoritative parties at the location. § 87(2)(b) was cooperative, and called someone inside to have them open the door. Sgt. Ferreira never informed § 87(2)(b) that he would be arrested if he did not comply with his instructions, though Sgt. Ferreira noted during the interview that § 87(2)(b) was going to be arrested regardless. After the patrons were let out, Sgt. Ferreira, Lt. Rotte, and multiple other officers entered the location. Sgt. Ferreira was the first officer to enter, and ultimately made the decision for officers to enter the establishment.

Lt. Rotte's statement was generally consistent with that of Sgt. Ferreira (BR 09). Lt. Rotte stated that he followed a few seconds behind Sgt. Ferreira as he approached § 87(2)(b) a known promoter in the area. Sgt. Ferreira conducted most of the conversation with § 87(2)(b) while Lt. Rotte observed § 87(2)(b) front door, during which time the officers tried to get § 87(2)(b) to contact someone inside the location to let the patrons out. Lt. Rotte could not recall any information provided by § 87(2)(b) aside from § 87(2)(b) claiming that there was no one inside § 87(2)(b) § 87(2)(b) eventually reached someone inside the establishment, but this person refused to open the door.

After Lt. Rotte was called away briefly to address a situation at § 87(2)(b) he returned and was informed by Sgt. Ferreira that the authoritative parties were "going to start letting people out." Lt. Rotte stated that he believed patrons left § 87(2)(b) before any officers entered the premises. Lt. Rotte stated that someone opened the door from inside the establishment, and that he could not recall if this was a civilian or an officer, though he "want[ed] to say it was a civilian." Lt. Rotte did not recall if officers ever entered through the back door of § 87(2)(b). After the patrons were let out, Sgt. Ferreira and Lt. Rotte entered and searched the location to make sure it was empty. No one gave consent to enter the location, and Lt. Rotte stated that officers were not required to obtain consent to enter because § 87(2)(b) was open to the public during the incident. Lt. Rotte believed that § 87(2)(b) was open to the public because he observed people freely entering the establishment, and because he was aware of the party being promoted on Instagram.

PO Torres, Det. Nunez, PO Boylan and PO Ludvick did not have any knowledge of the circumstances under which officers gained access to § 87(2)(b) (BR 03, 04, 22 and 23).

§ 87(2)(b) Twitter feed shows that he was promoting multiple events on the date of incident as well as the dates prior and immediately thereafter (BR 10). The content of § 87(2)(b) tweets indicate that the events were "free all nite [sic]" and that different prices were being charged for various bottles of liquor. However, there is no indication that any of these events were being held at § 87(2)(b) on the night of October 21, 2017 into the following morning; the Instagram posts which are linked in these tweets no longer exist.

Video evidence provided by § 87(2)(b) depicts Sgt. Ferreira interacting with § 87(2)(b) outside of the § 87(2)(b) (BR 19). However, there is no footage depicting officers' entry to the establishment, and § 87(2)(b) no longer had access to § 87(2)(b) Restaurant's surveillance system on the date of his CCRB interview (BR 05).

In People v Hodge, 44 NY2d 553 [1978], the New York Court of Appeals held that "all warrantless searches presumptively are unreasonable per se" (BR 24).

Per Alcoholic Beverage Control Law § 106, retail premises licensed for the sale of alcohol are subject to inspection by any police officer during business hours (BR 32). In the course of the investigation for CCRB 201705030, a representative from the New York State Liquor Authority confirmed that unlicensed premises are not subject to such inspections (BR 26).

In People v Ortiz, 138 Misc 2d 486 [Crim Ct, Bronx County 1988], the Criminal Court of the City of New York, New York County noted that it is “well established” that areas of commercial property which are open to the public are not protected from unreasonable searches and seizures under the Fourth Amendment (BR 27).

As noted in People v Ortiz, it is a common feature of commercial establishments to have areas which are intended to be traversed by members of the public during hours of operation (such as the floor of a restaurant), as well as areas which are not intended for such use and for which the business and its affiliates enjoy a reasonable expectation of privacy. If the § 87(2)(b) was in fact open to the public during the incident, as is alleged by Sgt. Ferreira and Lt. Rotte, officers would have been free to enter and search any publicly traversable area of the establishment.

§ 87(2)(b) disputes, however, that the § 87(2)(b) was open to the public in any capacity, and stated that § 87(2)(b) was hosting a private event to which officers gained access through a rear entrance after unsuccessfully attempting to enter through the locked front door.

§ 87(2)(g)

the legitimacy of Sgt. Ferreira and Lt. Rotte’s entry to the publicly accessible areas of the § 87(2)(b) hinges on whether the establishment was open to the public at that time. Although § 87(2)(b) social media presence indicates that he regularly promotes parties which both vend alcohol and are open to the public, the investigation was unable to determine whether such an event was being hosted at the § 87(2)(b) on the date of incident. § 87(2)(g)



**Allegation (E) Abuse of Authority: At § 87(2)(b) in Manhattan, Sergeant Joan Ferreira stopped § 87(2)(b)**

**Allegation (F) Abuse of Authority: At § 87(2)(b) in Manhattan, Sergeant Joan Ferreira frisked § 87(2)(b)**

**Allegation (G) Abuse of Authority: At § 87(2)(b) in Manhattan, Sergeant Joan Ferreira stopped individuals.**

**Allegation (H) Abuse of Authority: At § 87(2)(b) in Manhattan, Sergeant Joan Ferreira frisked individuals.**

**Allegation (I) Abuse of Authority: At § 87(2)(b) in Manhattan, Sergeant Joan Ferreira searched individuals.**

**Allegation (J) Abuse of Authority: At § 87(2)(b) in Manhattan, Lieutenant Merani Rotte participated in stopping individuals.**

**Allegation (K) Abuse of Authority: At § 87(2)(b) in Manhattan, Lieutenant Merani Rotte participated in frisking individuals.**

**Allegation (L) Abuse of Authority: At § 87(2)(b) in Manhattan, Lieutenant Merani Rotte participated in searching individuals.**

**Allegation (M) Abuse of Authority: At § 87(2)(b) in Manhattan, Police Officer Daniel Boylan stopped individuals.**

**Allegation (N) Abuse of Authority: At § 87(2)(b) in Manhattan, Police Officer Daniel Boylan frisked individuals.**

**Allegation (O) Abuse of Authority: At § 87(2)(b) in Manhattan, Police Officer James Ludvick stopped individuals.**

**Allegation (P) Abuse of Authority: At § 87(2)(b) in Manhattan, Police Officer James Ludvick frisked individuals.**

In his sworn statement, § 87(2)(b) alleged that officers were “searching everybody” as they left § 87(2)(b) § 87(2)(b) illustrated this by physically demonstrating a “patting down” motion during his interview (BR 05). § 87(2)(b) stated that he was personally searched, and that he believed § 87(2)(b) was as well. § 87(2)(b) initial complaint did not contain this allegation.

In his phone statement, § 87(2)(b) who was arrested during this incident, described being patted down by Sgt. Ferreira (BR 06). § 87(2)(b) did not mention other individuals being searched.

§ 87(2)(b) who was also arrested, did not mention attendees being searched during his phone statement (BR 07).

Sgt. Ferreira stated that after officers gained access to § 87(2)(b) he looked inside the establishment and observed a crowd of approximately 100 people, in excess of § 87(2)(b) Restaurant’s capacity of 74 (BR 08). Sgt. Ferreira claimed that these persons were technically committing criminal trespassing, but that patrons at after-hours clubs are typically unaware that they are there unlawfully. Sgt. Ferreira had no additional concerns about patrons being engaged in criminality. Individuals began rushing out of § 87(2)(b) at which time Sgt. Ferreira stepped to the door and instructed people to leave in an orderly fashion. As they left, Sgt. Ferreira asked the patrons who was charging for alcohol, at which time the patrons pointed out § 87(2)(b) The individuals who were leaving § 87(2)(b) had no additional interactions with officers, and none of these

individuals were frisked or searched. However, Sgt. Ferreira later clarified that he asked women leaving § 87(2)(b) if he could see their bags, to ensure that they were “not taking anything out of the location that they’re not supposed to.”

Lt. Rotte claimed to be unaware of whether any frisks or searches were conducted of patrons leaving § 87(2)(b) because he was “looking at people’s faces” to recognize the ownership of the establishment, and had “tunnel-vision” (BR 09). Lt. Rotte denied instructing officers to frisk or search individuals leaving § 87(2)(b). Aside from the illegal after-hours gathering, Lt. Rotte did not make any observations or receive any information during the incident which led him to believe that additional crimes were being committed at the § 87(2)(b). Lt. Rotte mentioned various violent acts that had occurred in the general vicinity of § 87(2)(b) such as a “slashing” at West 207<sup>th</sup> Street and Vermilyea Avenue; however, Lt. Rotte could not recall the date on which these incidents occurred and was unable to articulate how these incidents were related to the § 87(2)(b) other than their occurring late at night. Lt. Rotte corroborated Sgt. Ferreira’s concern about individuals leaving § 87(2)(b) in an orderly fashion.

PO Boylan stated that he was instructed to frisk individuals leaving § 87(2)(b) but did not recall whether Sgt. Ferreira or Lt. Rotte issued this instruction (BR 22). PO Boylan believed that everyone who left § 87(2)(b) was frisked, and did not recall if individuals were asked for consent. PO Boylan did not recall which officers participated in frisking civilians aside from himself. PO Boylan did not make any observations that led him to have concerns for officer safety as individuals left § 87(2)(b). However, PO Boylan stated that “each and every” after hours club in the 34<sup>th</sup> Precinct is associated with violence.

PO Ludvick recalled being instructed by Sgt. Ferreira to shine a flashlight as Sgt. Ferreira searched the bags of individuals leaving § 87(2)(b) (BR 23). PO Ludvick did not know why the bags were being searched. Sgt. Ferreira asked everyone who came out of § 87(2)(b) whether he could search their bag and was achieving total compliance in this regard. Sgt. Ferreira did not issue additional instructions. PO Ludvick did not remember if additional searches were conducted, and did not observe officers making contact with civilians as they left § 87(2)(b). PO Ludvick was not aware of any information pertaining to safety concerns at this time.

PO Torres and PO Nunez denied having any knowledge of these allegations (BR 03 and 04).



201801900\_20181030\_1759\_DM.mp4

This allegation is depicted by video evidence (BR 48). The above is compressed footage which is otherwise identical to the original footage provided by § 87(2)(b) which may be reviewed at BR 19. In the above video, which is 02:02 minutes in length, Sgt. Ferreira can be observed frisking individuals at 00:03 minutes, 00:19 minutes, 00:36 minutes, 00:49 minutes, 01:12 minutes, 01:43 minutes, and 01:48 minutes. PO Boylan can be seen frisking individuals at 00:07 minutes, 00:14 minutes, 1:32 minutes, 1:40 minutes, 1:44 minutes, and 1:50 minutes. PO Ludvick can be observed frisking individuals at 00:24 minutes, 00:41 minutes, and 00:55 minutes. Sgt. Ferreira is depicted searching individuals’ bags at 00:59 minutes, 01:04 minutes, and 1:23 minutes. Lt. Rotte is depicted standing directly in front of Sgt. Ferreira, PO Ludvick and PO

Boylan for the duration of this footage with no obstructions to his field of vision.

Upon being presented with this footage, Sgt. Ferreira claimed that each person who was frisked and searched during the interaction was asked for and granted consent. Lt. Rotte, upon being presented with the entirety of this footage, denied having any independent recollection of individuals being frisked or searched, but stated, “It’s obvious what’s going on.” PO Ludvick and PO Boylan both affirmed observing themselves conducting frisks of individuals upon reviewing this footage.

Penal Law § 140.00 – 140.17 states in its definition of terms that a “person who, regardless of his intent, enters or remains in or upon premises which are at the time open to the public does so with license and privilege unless he defies a lawful order not to enter or remain, personally communicated to him by the owner of such premises or other authorized person” (BR 28). The ensuing sections of the Penal Law state that for an individual to be guilty of trespass or criminal trespass of any degree, an individual must knowingly remain on a premises unlawfully.

Patrol Guide Procedure 212-11 specifies that an officer may not ask an individual for consent to search absent a “founded suspicion” of criminality, that an individual may not be stopped absent a “particularized and objective basis for suspecting the person stopped of... criminal conduct,” and that frisks of an individual’s person or personal items required “reasonable suspicion” that this individual is armed and dangerous (BR 29).

In People v Lilly, 211 AD2d 428 [1st Dept 1995], the Supreme Court of New York, Appellate Division, First Department determined that an unlawful stop had occurred when an officer “placed his hand on defendant's left shoulder to brush him aside” because it amounted to a “significant interruption [of his] liberty of movement” (BR 30).

It is evident that officers had an interest in ensuring that patrons left § 87(2)(b) in an orderly fashion; and that some form of physical contact and obstruction of egress, such as Sgt. Ferreira can be observed effecting at 1:54 minutes in this footage, § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g) The only such suspicion voiced here by a member of service – Sgt. Ferreira’s claim that patrons were committing criminal trespassing § 87(2)(g) that patrons were likely unaware that they were there unlawfully; moreover, Sgt. Ferreira and Lt. Rotte both claimed that § 87(2)(b) was open to the public, and Penal Law § 140.00 states that individuals who remain on such premises do so lawfully until they defy an order to disperse.

§ 87(2)(g)

§ 87(2)(g) Although § 87(2)(b) frisk is not depicted in the footage obtained by the investigation, the investigation credits § 87(2)(b) account because video evidence depicts almost every male exiting § 87(2)(b) being frisked over the span of time for which footage was provided. § 87(2)(g)

§ 87(2)(g)

**Allegation (Q) Abuse of Authority: Sergeant Joan Ferreira searched § 87(2)(b) in Manhattan.**

**Allegation (R) Abuse of Authority: Lieutenant Merani Rotte searched § 87(2)(b) in Manhattan.**

**Allegation (S) Abuse of Authority: At § 87(2)(b) in Manhattan, Sergeant Joan Ferreira seized § 87(2)(b) and § 87(2)(b) property.**

**Allegation (T) Abuse of Authority: At § 87(2)(b) in Manhattan, Lieutenant Merani Rotte seized § 87(2)(b) and § 87(2)(b) property.**

§ 87(2)(b) stated during his CCRB interview that upon returning to § 87(2)(b) after the incident, he reviewed surveillance footage and determined that officers had searched the establishment and removed his computer, speakers and DJ mixer (BR 05).

PO Torres had no knowledge of the circumstances of the § 87(2)(b) being entered or searched during this interaction (BR 04). PO Torres did, however, prepare the arrest reports for § 87(2)(b) and § 87(2)(b) as well as complete vouchers for the property that was removed as arrest evidence, which consists of a microphone, turntables and two speakers (BR 45).

As noted above, Sgt. Ferreira stated that he instructed § 87(2)(b) to grant officers access to § 87(2)(b) solely to clear individuals out of the location, confiscate the illegal liquor inside and arrest the authoritative parties. Sgt. Ferreira recalled speakers being removed from the establishment, and stated that additional items which he could not recall were confiscated as arrest evidence (BR 08).

As noted previously, Lt. Rotte's statements regarding the circumstances under which officers entered § 87(2)(b) were generally consistent with Sgt. Ferreira's. Lt. Rotte could not recall what was removed from § 87(2)(b) aside from alcohol and had no knowledge of property being removed and not vouchered. Lt. Rotte denied instructing officers to remove property from the establishment, and stated that he could not recall whether Sgt. Ferreira issued this instruction.

PO Ludvick denied having any knowledge of § 87(2)(b) being searched (BR 23). Det. Nunez did not enter the § 87(2)(b) and had no knowledge of property being removed (BR 03).

PO Boylan stated that he entered the § 87(2)(b) upon being instructed to do so, although he did not recall from whom he received this instruction (BR 22). PO Boylan did not recall if property was removed from § 87(2)(b).



201801900\_20181030\_1812\_DM.mp4

This allegation is depicted by video evidence (BR 49). The above is compressed footage which is otherwise identical to the original footage provided by § 87(2)(b) which may be reviewed at BR 12. At 00:04 minutes, drinks and pitchers can be seen resting on various restaurant-style high tables inside the § 87(2)(b). Lt. Rotte physically picks up a DJ controller at 00:06 minutes in the above footage while another officer carries a speaker.

This allegation has been pleaded against Sgt. Ferreira and Lt. Rotte because they were the two supervisors on scene during the entry and search of § 87(2)(b) and because Lt. Rotte's claim that he was unaware of property being removed from the establishment is belied by video evidence depicting him handling the confiscated property. The tables and beverages visible in the above footage indicate that these items were removed from areas of the restaurant which would be freely accessible during times at which it was open to the public.

§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)

**Allegation (U) Abuse of Authority: An officer damaged § 87(2)(b) and § 87(2)(b) property.**

§ 87(2)(b) claimed during his sworn statement that upon reviewing surveillance footage depicting the incident, he determined that officers broke the door to the basement of the establishment, as well as the door to the restaurant's liquor room (BR 05). Officers then proceeded to remove approximately \$2000 worth of alcohol from the basement. § 87(2)(b) provided no evidence regarding this alleged damage, and no other civilian mentioned this in their statement to the CCRB (BR 01, 06 and 07).

No officer voiced knowledge of doors being broken during the incident (BR 03, 04, 08, 09, 22 and 23).

Although, as discussed in the analysis for Allegations 2B-2D, the investigation determined that Sgt. Ferreira kicked open a door to gain access to § 87(2)(b) office during the incident, § 87(2)(g)

§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)  
§ 87(2)(g)

**Allegation (V) Abuse of Authority: Sergeant Joan Ferreira entered § 87(2)(b) in Manhattan.**

**Allegation (W) Abuse of Authority: Lieutenant Merani Rotte entered § 87(2)(b) in Manhattan.**

**Allegation (X) Abuse of Authority: Sergeant Joan Ferreira searched § 87(2)(b) in Manhattan.**

**Allegation (Y) Abuse of Authority: Lieutenant Merani Rotte searched § 87(2)(b) in Manhattan.**

**Allegation (Z) Abuse of Authority: At § 87(2)(b) in Manhattan, Sergeant Joan Ferreira seized § 87(2)(b) and § 87(2)(b) property.**

**Allegation (2A) Abuse of Authority: At § 87(2)(b) in Manhattan, Lieutenant Merani Rotte seized § 87(2)(b) and § 87(2)(b) property.**

It is undisputed that officers entered, searched, and removed alcohol from the basement area of the § 87(2)(b)

§ 87(2)(b) stated during his CCRB interview that upon returning to § 87(2)(b) after the incident, he reviewed surveillance footage and determined that officers had entered the basement area and removed an amount of liquor he estimated as being worth \$2000 (BR 05). § 87(2)(b)

§ 87(2)(b) described the layout of this space as an open area which is accessible through one door, within which are located additional doors leading to an office, a liquor room, and a boiler room, respectively. In addition to searching the basement and liquor room, officers searched § 87(2)(b) office, which he knew because he observed papers scattered on the floor when he returned to the office.

As noted above, Sgt. Ferreira stated that he instructed § 87(2)(b) to grant officers access to § 87(2)(b) solely to clear individuals out of the location, confiscate the illegal liquor inside and arrest the authoritative parties (BR 08). Sgt. Ferreira stated that once inside the location, he went downstairs to the basement to make sure there was “nothing illegal.” Sgt. Ferreira described the basement as a well-lit area containing a bedroom, boiler room, and an area where alcohol, juice and Red Bull were stored. Sgt. Ferreira affirmed that alcohol was removed from the establishment.

Lt. Rotte stated after officers entered the § 87(2)(b) the establishment was searched to ensure that it was empty, asserting that “someone could be hiding in the closet with a knife or a gun, somebody could be in distress, some of these girls get raped in these locations” (BR 09). As previously noted, Lt. Rotte stated that he never received any indication that any crimes were being committed at the § 87(2)(b) aside from an illegal after-hours gathering. Lt. Rotte gave conflicting testimony about whether he also intended to establish that § 87(2)(b) was operating as an after-hours club. Lt. Rotte stated that during the search, he was looking people, alcohol, and “anything harmful,” such as a gun. When asked why he was looking for guns inside the location, however, Lt. Rotte stated, “I take that back,” and denied that he was specifically looking for weapons. Lt. Rotte believed that alcohol was removed and vouchered during the incident, but could not recall anything else being removed either as arrest evidence or personal property. Lt. Rotte denied instructing officers to remove property from the location, and Lt. Rotte did not know whether Sgt. Ferreira issued this instruction.

No property vouchers were prepared regarding the alcohol removed from the § 87(2)(b) (BR 45). This allegation is being addressed concurrently by Manhattan North Investigations (BR 46).



201801900\_20181030\_1814\_DM.mp4

This allegation is depicted by video evidence (BR 50). The above is compressed footage which is otherwise identical to the original footage provided by § 87(2)(b) which may be reviewed at BR 16. At the outset of this footage, which depicts the basement area of the § 87(2)(b) Lt. Rotte can be seen walking towards the camera frame shining a flashlight. At 00:06 minutes, Sgt. Ferreira can be observed carrying a box containing bottles of alcohol out of the establishment. Throughout the video, various items can be observed – such as an upright refrigerator, an under-counter freezer, and unconcealed cleaning products stacked on shelves – which are indicative of this not being a publicly traversable area of the restaurant.

In People v Hodge, 44 NY2d 553 [1978], the New York Court of Appeals held that “all warrantless searches presumptively are unreasonable per se” (BR 24).

In People v Ortiz, 138 Misc 2d 486 [Crim Ct, Bronx County 1988], the Criminal Court of the City of New York, New York County noted that it is “well established” that private areas of commercial property, as opposed to parts of that property which are open to the public, are protected from unreasonable searches and seizures under the Fourth Amendment (BR 27).

In Maryland v Buie, 494 US 325 [1990], the Supreme Court of the United States held that, incident to an arrest, officers may “look in closets and other spaces immediately adjoining the place of arrest from which an attack could be launched” (BR 31). To further conduct a protective sweep of a premises, officers must possess “articulable facts which, taken together with the rational inferences from those facts, would warrant a reasonably prudent officer in believing that the area to be swept harbors an individual posing a danger to those on the arrest scene.”

§ 87(2)(g)

As noted previously, no officer had any specific indication that individuals at the location posed a threat to officer safety or were engaged in criminality beyond that of hosting an illegal after-hours event. § 87(2)(g)

While the permissibility of officers searching the publicly accessible areas of the § 87(2)(b) rests upon whether those areas were open to the public at the time of incident, the ensuing search of the non-publicly accessible areas of the restaurant, such as the basement and liquor cage, § 87(2)(b). As Sgt. Ferreira and Lt. Rotte had advance knowledge that an event was being held at § 87(2)(b) § 87(2)(g)



§ 87(2)(g) § 87(2)(g)  
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§ 87(2)(g)  
§ 87(2)(g)

**Allegation (2B) Abuse of Authority: At § 87(2)(b) in Manhattan, Sergeant Ferreira damaged § 87(2)(b) and § 87(2)(b) property.**

**Allegation (2C) Abuse of Authority: Sergeant Joan Ferreira entered § 87(2)(b) in Manhattan.**

**Allegation (2D) Abuse of Authority: Sergeant Joan Ferreira searched § 87(2)(b) in Manhattan.**

§ 87(2)(b) alleged during his sworn statement that officers broke down a door to gain access to his office during the incident (BR 05). § 87(2)(b) played footage during his CCRB interview depicting officers damaging property to enter this location. § 87(2)(b) mentioned his office being searched in his initial complaint, but did not allege that officers broke down the door. No other civilian statement contains this allegation.

No officer voiced knowledge of doors being broken down during the incident (BR 03, 04, 08, 09, 22 and 23). Sgt. Ferreira recalled that there was a door to one of the rooms located in the basement; however, Sgt. Ferreira initially stated that he did not recall how he gained access to the room located behind this door (BR 08).



201801900\_20181030\_1817\_DM.mp4

This allegation is depicted by video evidence (BR 51). The above is compressed footage which is otherwise identical to the original footage provided by § 87(2)(b) which may be reviewed at BR 14. At 00:20 minutes, in the middle-right of the upper portion of the frame, Sgt. Ferreira can be observed extending his arm and attempting to open a door in the basement of the § 87(2)(b). At 00:24 minutes, Sgt. Ferreira can be seen kicking the door twice. At 00:29 minutes, Sgt. Ferreira can be observed entering through the door.



201801900\_20181023\_2201\_DM.mp4

A copy of the relevant portions of the video, which has been slowed down, stabilized and cropped for clarity, can be reviewed above (BR 47). At 00:07 minutes, Sgt. Ferreira can be observed extending his arm towards the door, and can be observed kicking the door at 00:14 minutes and 00:16 minutes.



Sgt. Ferreira was presented with the original footage during his CCRB interview (BR 08). At 00:03 minutes, Sgt. Ferreira identified himself as the officer depicted opening a refrigerator and identified the location depicted as the basement of the § 87(2)(b). Sgt. Ferreira was played the portion of footage depicting him kicking the door four times during the interview. Sgt. Ferreira denied observing himself kicking the door, and claimed that at 00:24 minutes he is depicted extending his arm towards the door. Sgt. Ferreira identified the area beyond this door as a room containing a bed, stated that he did not know what was in this room before he entered, and stated that reviewing this footage only refreshed his memory of generally being in the location.

Patrol Guide Procedure 200-02 states that the role of members of the NYPD is to protect the lives and property of persons.

Although Sgt. Ferreira denied kicking down any doors in the basement of the § 87(2)(b), Sgt. Ferreira identified himself in the above footage, wherein he is depicted kicking a door in order to gain entrance to the office area. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

**Allegation (2E) Abuse of Authority: At § 87(2)(b) in Manhattan, Sergeant Ferreira damaged § 87(2)(b) and § 87(2)(b) property.**

**Allegation (2F) Abuse of Authority: At § 87(2)(b) in Manhattan, Lieutenant Merani Rotte damaged § 87(2)(b) and § 87(2)(b) property.**

§ 87(2)(b) alleged during his sworn statement that officers damaged the windows and shade comprising the front façade of the § 87(2)(b) (BR 05). This allegation is not contained in § 87(2)(b) initial complaint or in any other civilian statement.

Sgt. Ferreira stated that the material blocking out § 87(2)(b) windows was removed because it was an SLA violation (BR 08).

Lt. Rotte stated that he personally removed some of the material blocking out the windows of § 87(2)(b) which he characterized as “like a garbage bag” (BR 09). Lt. Rotte removed this material because it was “just obstructing,” stating, “We were gonna secure the location. If someone’s gonna go in and steal something, it could be seen outside for numerous reasons [sic].” and denied knowledge of any other property being damaged during the incident.



201801900\_20181030\_1820\_DM.mp4

This allegation is depicted by video evidence (BR 17). The above footage depicts officers, including Sgt. Ferreira and Lt. Rotte, assembled around the front entrance of § 87(2)(b). At 00:03, Sgt. Ferreira can be seen removing a screen blocking out the front window of the § 87(2)(b). At 00:30 minutes, Sgt. Ferreira sets the screen down on the floor with such force that a piece of the screen appears to come off.

Lt. Rotte was shown this footage during his CCRB interview (BR 09). At approximately 00:06 minutes in the footage, Lt. Rotte stated, “Yikes.” Lt. Rotte identified Sgt. Ferreira as the individual depicted removing the screen. Sgt. Ferreira was not shown this footage during his CCRB interview.

Alcoholic Beverage Control Law § 106(9) states that “All glass in any window or door on [a] licensed premises shall be clear and shall not be opaque, colored, stained or frosted” (BR 32).

As noted previously, it is undisputed that § 87(2)(b) did not have an active liquor license on the date of incident: § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g), § 87(4-b)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- This case was originally filed under original case § 87(2)(b) which was § 87(2)(b) first CCRB complaint (BR 39). This case was generated to address the second of two incidents originally reported in that case.
- This is the first CCRB complaint to which § 87(2)(b) or § 87(2)(b) has been a party (BR 39).

- In his 18 years as a member of the NYPD, Det. Nunez has previously been the subject of 36 allegations in 15 cases. 17 of these allegations are for excessive force.
  - In CCRB 200504839, Det. Nunez was substantiated for a vehicle search, for which he received instructions.
  - § 87(2)(g), § 87(4-b)
- In his two years as a member of the NYPD, this is the first complaint in which PO Torres has been listed as a subject.
- In his 12 years as a member of the NYPD, Sgt. Ferreira has been the subject of four prior allegations in four cases, § 87(2)(g)
- In his 13 years as a member of the NYPD, Lt. Rotte has been the subject of six prior allegations in three cases, § 87(2)(g)
  - § 87(2)(g), § 87(4-b)
  - In CCRB 201111900, Lt. Rotte was substantiated for the stop of a person. The CCRB recommended command discipline. Lt. Rotte received no disciplinary action from the NYPD.
- In his two years as a member of the NYPD, this is the first complaint in which PO Ludvick has been listed as a subject.
- PO Boylan has been a member of the NYPD for two years. He has been the subject of six additional charges in two cases, § 87(2)(g)
  - In CCRB 201703894, PO Boylan was substantiated for allegations of threat of force, discourtesy (word) and offensive language (gender) § 87(2)(g), § 87(4-b)

#### **Mediation, Civil and Criminal Histories**

- This case was determined to be ineligible for mediation because § 87(2)(b) and § 87(2)(b) were arrested during the incident.
- A request submitted to the New York City Comptroller's Office indicated that as of April 13, 2018, § 87(2)(b) had not filed a notice of claim regarding this incident (BR 40).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: \_\_\_\_\_  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date